

REMARKS

The amendment does not involve new matter. The first paragraph of the specification has been updated to include the patented status of the parent application. This overcomes the objection raised in paragraph 4 of the outstanding Office Action. Claims 28, 30-31, 36 and 38-39 have been amended to put them in better form, but not for any reason related to patentability.

In the outstanding Office Action, claims 24-25 and 28-43 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U. S. Patent No. 4,822,597 (Faust) in view of U.S. Patent No. 4,997,659 (Yatka). This rejection is respectfully traversed. Claim 24 calls for a method of producing a chewing gum product containing an antimicrobial agent wherein the antimicrobial agent is a part of a rolling compound applied on the chewing gum product. Claim 25 calls for a method of producing a chewing gum product containing an antimicrobial agent wherein the antimicrobial agent is a part of a coating on a chewing gum pellet. Faust does not disclose or suggest either of these aspects of the claimed invention. In fact, Faust teaches away from the claimed invention.

Faust discloses chewing gum compositions containing anesthetics. The background section of Faust notes that sore throat lozenges containing anesthetics have been used, but that when anesthetics are added to chewing gum, they get entrapped in the gum base (bolas) and are not readily released. Faust thus suggests a method by which anesthetics can be added to chewing gum and still be readily released. While the present claims call for antimicrobial agents and Faust discloses anesthetics, it is noted that hexylresorcinol is both an anesthetic and an antimicrobial agent, and is disclosed in Faust. Thus Faust teaches putting hexylresorcinol in chewing gum. If the anesthetic of Faust were included in a rolling compound or in a coating on a chewing gum pellet, it would be released very quickly, much like the anesthetic in the lozenge. Since Faust desired a product that would have the anesthetic released from a chewing gum as the gum was chewed, there would be no reason to put it in a rolling compound or coating on the gum surface.

The Office Action states that the hexylresorcinol in Faust was pre-mixed with sweeteners, and that it would be obvious to include this pre-mixture as part of a rolling

compound or coating applied to chewing gum. The only support in the Office Action for the obviousness of this combination is that it is old to include an active agent or sweetener, such as alitame, as part of a rolling compound or in a coating as taught by Yotka. While Yotka teaches to use alitame in a chewing gum coating or in a rolling compound, it does not suggest that any other material should be treated the same way. It certainly does not suggest that an anesthetic put into a chewing gum could alternatively be included in a rolling compound or a coating. Alitame is a high-intensity sweetener. Yotka discloses methods by which the alitame can be included in a gum product so as to delay its release, prevent degradation, or both. Anesthetics are completely different compounds, and included in chewing gum for completely different reasons. There is nothing in Faust that would suggest that the anesthetic would degrade if included in chewing gum, and Faust certainly did not want to delay the anesthetic's release. Thus there is nothing in Yotka that would suggest treating an anesthetic the same way that alitame was used, and nothing in Faust that would suggest looking at Yotka for ideas about how to include anesthetics in chewing gum products.

The Office Action attempt to lump both anesthetics and alitame in the same category, calling them both "actives." However, there is no supported by either Faust or Yotka for calling both of these materials "actives", or suggesting that they be treated the same way. Calling two different compositions that have both been added to chewing gum in different prior art references by one common name does not make it obvious to treat one composition to all the same methods taught for treating the other composition.

Faust's whole idea was putting the anesthetics in the gum composition. Faust makes no suggesting of putting hexylresorcinol in a gum pellet coating or using it in a rolling compound. Yotka does not suggest anything about how to use an anesthetic. Absent hindsight reconstruction, there is nothing in Faust or Yotka that would lead one of ordinary skill in the art to take the anesthetic and put it in a gum pellet coating or in a rolling compound, where everything else taught in Faust clearly mixes the anesthetic into the chewing gum composition. Even if the anesthetic were pre-mixed with a sweetener to enable its release from a chewing gum bolas, that would not suddenly make it obvious to use it like a high intensity sweetener.

Since each of the reasons for the rejections have been overcome, it is believed that the case is in condition for allowance. An early notice of allowance is therefore respectfully requested.

Respectfully submitted,

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